

Introduced by Senator Simitian

February 24, 2006

An act to amend Sections 1923.2 and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1609, as introduced, Simitian. Reverse mortgages: annuities.

Existing state and federal law regulate the activities of financial institutions. Existing state law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement.

This bill would prohibit a lender from requiring the purchase of an annuity as part of a reverse mortgage transaction. The bill would prohibit a lender from offering an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the agreement. The bill would make changes to the disclosure notice provided to an applicant for a reverse and would require a lender to provide a specified list of independent loan counselors. The bill would require an applicant to meet with an independent loan counselor before a finalizing reverse mortgage.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1923.2 of the Civil Code is amended to
2 read:

1 1923.2. A reverse mortgage loan shall comply with all of the
2 following requirements:

3 (a) Prepayment, in whole or in part, shall be permitted without
4 penalty at any time during the term of the reverse mortgage loan.
5 For the purposes of this section, penalty does not include any
6 fees, payments, or other charges that would have otherwise been
7 due upon the reverse mortgage being due and payable.

8 (b) A reverse mortgage loan may provide for a fixed or
9 adjustable interest rate or combination thereof, including
10 compound interest, and may also provide for interest that is
11 contingent on the value of the property upon execution of the
12 loan or at maturity, or on changes in value between closing and
13 maturity.

14 (c) A reverse mortgage may include costs and fees that are
15 charged by the lender, or the lender's designee, originator, or
16 servicer, including costs and fees charged upon execution of the
17 loan, on a periodic basis, or upon maturity.

18 (d) If a reverse mortgage loan provides for periodic advances
19 to a borrower, these advances shall not be reduced in amount or
20 number based on any adjustment in the interest rate.

21 (e) A lender who fails to make loan advances as required in
22 the loan documents, and fails to cure an actual default after
23 notice as specified in the loan documents, shall forfeit to the
24 borrower treble the amount wrongfully withheld plus interest at
25 the legal rate.

26 (f) The reverse mortgage loan may become due and payable
27 upon the occurrence of any one of the following events:

28 (1) The home securing the loan is sold or title to the home is
29 otherwise transferred.

30 (2) All borrowers cease occupying the home as a principal
31 residence, except as provided in subdivision (h).

32 (3) Any fixed maturity date agreed to by the lender and the
33 borrower occurs.

34 (4) An event occurs which is specified in the loan documents
35 and which jeopardizes the lender's security.

36 (g) Repayment of the reverse mortgage loan shall be subject to
37 the following additional conditions:

38 (1) Temporary absences from the home not exceeding 60
39 consecutive days shall not cause the mortgage to become due and
40 payable.

1 (2) Extended absences from the home exceeding 60
2 consecutive days, but less than one year, shall not cause the
3 mortgage to become due and payable if the borrower has taken
4 prior action which secures and protects the home in a manner
5 satisfactory to the lender, as specified in the loan documents.

6 (3) The lender’s right to collect reverse mortgage loan
7 proceeds shall be subject to the applicable statute of limitations
8 for written loan contracts. Notwithstanding any other provision
9 of law, the statute of limitations shall commence on the date that
10 the reverse mortgage loan becomes due and payable as provided
11 in the loan agreement.

12 (4) The lender shall prominently disclose in the loan
13 agreement any interest rate or other fees to be charged during the
14 period that commences on the date that the reverse mortgage loan
15 becomes due and payable, and that ends when repayment in full
16 is made.

17 (h) The first page of any deed of trust securing a reverse
18 mortgage loan shall contain the following statement in 10-point
19 boldface type: “This deed of trust secures a reverse mortgage
20 loan.”

21 (i) *A reverse mortgage shall not require the purchase of an*
22 *annuity. A lender shall not offer an annuity prior to the closing of*
23 *the reverse mortgage or before the expiration of the right of the*
24 *borrower to rescind the agreement.*

25 SEC. 2. Section 1923.5 of the Civil Code is amended to read:
26 1923.5. (a) No reverse mortgage loan application shall be
27 taken by a lender unless the loan applicant has received from the
28 lender the following plain language statement in conspicuous
29 16-point type or larger, advising the prospective borrower about
30 counseling prior to obtaining the reverse mortgage loan:

31
32 **IMPORTANT NOTICE**
33 **TO REVERSE MORTGAGE LOAN APPLICANT**

34
35 **THE REVERSE MORTGAGE WHICH YOU ARE**
36 **CONSIDERING:**

- 37 **DOES**
- 38 **DOES NOT**

39 **REQUIRE THAT YOU PURCHASE AN ANNUITY IN**
40 **CONNECTION WITH THE REVERSE MORTGAGE**

1 TRANSACTION.

2

3 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
4 TRANSACTION THAT PROVIDES A MEANS OF USING
5 THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR
6 THE VALUE OF YOUR HOME, AS A SOURCE OF
7 ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A
8 REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING
9 LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT
10 LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND
11 YOUR ESTATE. IT IS THEREFORE IMPORTANT TO
12 UNDERSTAND THE TERMS OF THE REVERSE
13 MORTGAGE AND ITS EFFECT. *BECAUSE OF THIS,*
14 *BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE*
15 *REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN*
16 *COUNSELOR. A LIST OF APPROVED COUNSELORS WILL*
17 *BE PROVIDED TO YOU BY THE LENDER.*

18 ~~AS IS TRUE BEFORE ENTERING INTO ANY COMPLEX~~
19 ~~FINANCIAL ARRANGEMENT, IT IS WISE TO SEEK THE~~
20 ~~COUNSELING AND ADVICE OF APPROPRIATE~~
21 ~~PROFESSIONALS SUCH AS ATTORNEYS, FINANCIAL~~
22 ~~ADVISERS, AND ACCOUNTANTS. COUNSELORS~~
23 ~~TRAINED ON REVERSE MORTGAGES MAY ALSO BE~~
24 ~~AVAILABLE.~~ YOU MAY ALSO WANT TO DISCUSS YOUR
25 DECISION WITH FAMILY MEMBERS OR OTHERS ON
26 WHOM YOU RELY FOR FINANCIAL ADVICE.

27 (b) Before giving the prospective borrower the statement
28 described in subdivision (a), the lender shall mark the appropriate
29 box concerning annuity requirements.

30 (c) *The lender shall provide the applicant with a list of*
31 *counselors approved by HUD and inform the applicant that the*
32 *applicant is required to meet with an independent loan counselor*
33 *before the reverse mortgage agreement may be finalized.*